

RECEIVED
IN LAKE CHARLES, LA

OCT 12 2006

ROBERT H. CHENYELL, CLERK
WESTERN DISTRICT OF LOUISIANA

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

DANIEL GREENE, ET AL. : DOCKET NO. 2:04 CV 1569
VS. : JUDGE MINALDI
FLEETWOOD ENTERPRISES, ET : MAGISTRATE JUDGE WILSON
AL.

MEMORANDUM RULING

Presently before the court is a Motion for Partial Summary Judgment [doc. 59] filed by Fleetwood Enterprises, Inc. ("Fleetwood").

Fleetwood asserts that there are no genuine issues of material fact and it is entitled to judgment as a matter of law on the plaintiffs' breach of express warranty claim. The plaintiffs, in their opposition, state that they dismissed their claims for breach of express warranty when they filed their First Supplemental and Amending Complaint, asserting that the Motion for Partial Summary Judgment is unnecessary. Although the plaintiffs assert that they have dismissed their claim for breach of express warranty, the First Supplemental and Amending Complaint contains a breach of express warranty claim at ¶ IV, which amends ¶ 26 of the original complaint.

The plaintiffs clearly intend to dismiss their claims for breach of express warranty and state that they did not address Fleetwood's arguments on this issue for this reason. Accordingly, Fleetwood's Motion for Partial Summary Judgment will be granted and the plaintiffs' claim for

breach of express warranty will be dismissed with prejudice.

Lake Charles, Louisiana, this 11 day of October, 2006.



PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE